IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 22473 of 2007(A)

PETITIONER:

JOSHY K.A., S/O AVARACHAN,
KIZHAKEDATH HOUSE, MANDAMCHIRA,
KANNARA, P.O.PATTIKAD, THRISSUR DIST.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
THRISSUR, THRISSUR DIST.

2. THE DEPUTY COMMISSIONER(APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 22473 of 2007

Dated, this the 25th day of July, 2007

J U D G M E N T

Petitioner is served with two penalty orders, namely Exts.P1 & P2 by the same officer, both for the evasion of tax pertaining to transport of excavator, the value of which is stated to be Rs. 4 lakhs.

2. Since petitioner has filed appeal and revision against the penalty orders, petitioner can raise all contentions before the statutory authority. The present grievance of the petitioner is that 1st respondent has proposed assessment vide Ext.P6 based on penalty orders. Prayer in the writ petition is for a stay against proceeding for assessment, pending disposal of appeal and revision filed against penalty orders. Petitioner has a case that petitioner is only an owner-cum-driver of the vehicle, in which the excavator belonging to another person was transported. If petitioner is not engaged in this business, then of course, there is no scope for assessment and demand of tax, purely because petitioner has suffered penalty on account of transport of the equipment in his truck without records. However, 1st respondent is free to conduct

enquiry about the business, if any carried on by the petitioner and if there is any material to substantiate it, he can assess the petitioner. In the circumstances, this writ petition is disposed of directing the 2nd respondent and revisional authority to hear the petitioner and dispose of the appeal and revision filed against Exts.P1 & P2 orders within two months from the date of production of a copy of this judgment. There will be direction to the 1st respondent not to complete the assessment, if any, proposed against the petitioner for three months from now. However, he is free to conduct enquiry and collect evidence regarding the business if any carried on by the petitioner and thereafter he can proceed with assessment after disposal of the appeal and revision against penalty orders, based on orders issued in such revision and appeal.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg